IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 5672 of 2001 (S/S)
(Old No. 5764 of 1991)

Amar Nath Pandey
S/o Shri Gauri Shankder Pandey
R/o Hari Nawal Niwas
P.O. Katgharia, Haldwani,
District Nainital.

……. Petitioner

Versus

1. Oriental Insurance Co. Ltd.
   Post Box No. 87, 43 –Hazratganj,
   3rd Floor, Lucknow-226001
   through its Assistant General Manger
2. Oriental Insurance Co. Ltd.
   Post Box No. 97, 43 –Hazratganj,
   3rd Floor, Lucknow-226001
   through its Regional General Manger
3. Oriental Insurance Co. Ltd.
   Khazan Chand Mansion, The Mall, Almora
   Through its Asstt. Branch Manger
2. Oriental Insurance Co. Ltd.
   (Regd. Office) Oriental Office, P.B. No. 7037
   A -25 /27, Asaf Ali Road, New Delhi.

…… Respondents

Mr. Anil K. Joshi, Advocate for the petitioner.
Mr. D.S. Patni, Advocate for the respondents.

Hon. Prafulla C. Pant, J.

By means of this writ petition, the petitioner has sought writ in the nature of certiorari quashing the impugned order dated 17.01.1991, passed by Assistant General Manager (respondent No. 1) of Oriental Insurance Company Ltd., and order dated 24.01.1991, communicated by respondent No. 3, whereby the services of the petitioner were terminated.

2) Heard learned counsel for the parties.

3) Brief Facts of the case, as narrated in the writ petition, are that petitioner was appointed as Development Officer, Grade II, with the respondent Oriental Insurance Company Ltd. on 29th August 1988. He qualified for said post by participating in the selection process. The petitioner's services were on probation for a period of two years. Admittedly, petitioner gave work amounting to Rs. 62,056/-, while the target for the year was 1.75 lac. However, he gave required target for the next year. Stating that district Almora not being a commercial or industrial area, it is alleged that it was difficult to give target in such a District. As such, the petitioner became victim of equal treatment to unequal conditions. Vide impugned order dated 17.01.1991, the respondent No. 1 passed the order terminating the services of the petitioner on the ground that during the probation period, the work of the petitioner had not been found upto the mark. The said order was communicated by Branch Manager, of the respondent Company (respondent No. 3) through letter / order dated 24.01.1991. Alleging that another Development Officer, Grade II, R.S. Bhandari, was retained I n service, the petitioner has alleged that he is discriminated. It is further alleged that the petitioner's work for extended period of four montsh after probationary period was not considered before issuing the Impugned orders by the authorities. Challenging the impugned order it is stated that the impugned order is not passed by the Appointing Authority.

4) A counter affidavit has been filed on behalf of respondents in which it is stated that the petitioner might have performed his duty with utmost dedication, but on assessment it was found that he failed to achieve the target assigned to him and he had no right to continue, as he was on probation and his services were not confirmed. As to the unequal conditions alleged by the petitioner, it is stated that the respondents have already classified three categories namely Category ‘A’, ‘B’ and ‘C’, wherein the targets assigned are 5.5 lac, 4.72 lac and 3.75 lac, respectively. Almora being in the Category ‘C’, the petitioner’s business target was less than those who are posted in the cities of Class ‘A’ and ‘B’. Defending the impugned order it is stated in the counter affidavit that the petitioner’s case is not similar to that of R.S.Bhandari and H.C. Sanwal, as the target given by them was hundred per cent. As to the assessment of work for four months after completion of probation of two years, it is stated in the counter affidavit that had that period been also assessed then the petitioner would have challenged the same on the ground that assessment for a part period cannot be the correct affidavit filed on behalf of the respondents it is stated that Assistant General Manager is superior officer to the Regional Manager i.e. Appointing Authority, and as such, there is no illegality in the impugned order. It is further stated in the counter affidavit that Assistant General manager is vested with all the powers of Regional Manager of his area.

5) A rejoinder affidavit has been filed on behalf of the petitioner in which the averments made in the writ petition are reiterated.

6) Learned counsel for the petitioner drew attention of this Court to the principle of law laid down in ***Om Prakash Gupta Swadheen Vs. Union of India and other; AIR 1975 SUPREME COURT 1265,*** and it is argued that the petitioner's services are terminated not by the Appointing Authority i.e. the Regional Manager, but by Assistant General Manager, as such, the impugned order suffers from illegality. This Court is of the view that it is settled principle of law that any authority below the Appointing Authority cannot pass an order of termination, removal or dismissal of an employee. It is not the case of the petitioner that the Assistant General Manager (respondent No. 1) who passed the order of termination was below the rank of the Appointing Authority. In the opinion of this Court, the aforesaid case of Om Prakash Gupta (supra) does not help the petitioner for the reason that the respondents in their counter affidavit have stated that the Assistant General Manager was vested with all powers of the Regional Manager working in his jurisdiction. As far as the right to appeal is concerned, it is submitted by learned counsel for the respondents that the petitioner could have filed departmental appeal against the order passed by the Assistant General Manager to the General Manager of the Company. As such, no prejudice appears to have been caused to the petitioner on this count.

7) As far as the performance during the probation period is concerned, it is pertinent to mention here that Annexure -1 to the writ petition, which is copy of letter of appointment, shows that the petitioner's conditions of appointment included following conditions:

> "4 During the Probationary period, you will be required to fulfill the following requirements:-
>
> (a) i) You will have to procure a minimum premium income of Rs. 1.75 lacs during the first year and Rs. 2.00 lacs during the second year.
>
> ii) Out of the prescribed quota for each year, premium of atleast of Rs. 10,000/- should be from Non-Traditional business.
>
> iii) Out of the total premium procured by you, at least 50% of targeted premium should be from Non-traditional Business and/ or Fire and / or Miscellaneous (other town Motor)-
>
> The Oriental Insurance Co. Ltd.
>
> (b) You will have to satisfactorily perform all duties and functions assigned to you as per Schedules 'A' and 'B' annexed to this letter and also carry out all such functions as may be assigned to you and obey all such orders and instructions as may be given orally or in writing by your superiors from time to time.
>
> (c) You will strictly adhere to the norms of good conduct and general discipline.
>
> 5(a) confirmation in the services shall not be automatic, on fulfillment of the above conditions unless a letter of confirmation is specifically issued by the Company.
>
> (b) unless letter of confirmation or extension of probation is issued to you services shall stand automatically terminated after expiry of the period of probation.
>
> (c) During the probationary period you are liable to be discharged at any time without notice

and without assigning any reason whatsoever for such discharge."

8) Aforesaid conditions make it clear that before the petitioner's services are confirmed he was required to give specific target during the period of probation. Annexure-2 to the writ petition, which is impugned order dated by the Assistant General Manager shows following observation:

> "(1) 4a (I) 4 (III) of appointment letter number LRO:DEV:HILL:88 dated 29.08.1988 individually for each Probationary year and even on aggregate basis of both years.
>
> (2) 75% of the premium income under 4(a) (I) and 100% and 4(1) (III) of appointment letter No. LRO:DEV:HILL:88 dated 29.08.1988.
>
> As a result of which you neither qualify for confirmation nor for extension in the Probationary period."

Since, admittedly the petitioner did not fulfill the target, it cannot be said that the respondents committed any illegality in passing the impugned order. As far as equal treatment to unequal are concerned, it is explained in the counter affidavit that the targets for three different categories of cities were different, and as such, the petitioner cannot be said to have been discriminated as against equally situated persons.

10) Lastly, it is contended on behalf of the petitioner that performance given by him in last four months before termination is not considered by the employer. The

Petitioner has not disclosed in the writ petition that what was the target of those months and what was the performance achieved by him, as such, on its basis no benefits can be given to the petitioner.

11) For the reasons as discussed above, the writ petition has no force and the same is liable to be dismissed. The writ petition is dismissed, accordingly. No order as to costs.

(Prafulla C.Pant, J)

Dt. September 13, 2007
H. Negi